S.B. CIVIL WRIT PETITION NO. 6196/2006.

(STATE OF RAJASTHAN VS. MALI RAM & ANR.)

DATE OF ORDER : 23.11.2006.

HON'BLE MR. GOVIND MATHUR, J.

Mr. Shyam Ladrecha, AGA, for the petitioner.

By this petition for writ, a challenge is given to the award dated 16.03.2005 passed by the Labour Court – cum-Industrial Tribunal, Bikaner directing the petitioner – employer to promote the petitioner Shri Mali Ram as Lower Division Clerk w.e.f. 04.01.89. While directing as above, learned Tribunal held that without considering candidature of the workman Mali Ram, promotion was accorded to the persons junior to him including Shri Ram Jeewan as Lower Division Clerk w.e.f. 04.01.89, as such he is also entitled to be promoted in parity to the persons junior to him.

While giving challenge to the award impugned, it is contended by counsel for the petitioner -State that promotion was given to Shri Ram Jeewan as Lower Division Clerk in pursuant to the directions given by this Court in SBCW Petition No.219/88 decided on 27.03.1991. A copy of the judgment aforesaid is also shown to the Court.

From perusal of the facts averred in the judgment dated 27.03.91, it is apparent that appointment to Shri Ram Jeewan was given as Cleaner -cum- Chowkidar w.e.f. 27.04.91 and despite his eligibility to be considered for promotion, the same was denied to him, hence this Court while accepting this writ petition, directed the employer to promote Shri Ram Jeewan w.e.f. 04.01.89. It is the position admitted by the petitioner – employer that the workman Shri Mali Ram is senior to Shri Ram Jeewan and is also working as helper – cum – chowkidar in Ground Water Department. Once the respondents for whatsoever reason have promoted a person junior than the petitioner, then there is no just and valid reason to deny the same to him. A person junior if promoted and continued as such, then it is obligatory to promote the senior also, if he is not otherwise found unsuitable. In the instant matter, the Industrial Tribunal after reaching at the conclusion that the workman Shri Mali Ram is senior to Shri Ram Jeewan in the cadre of Cleaner -cum- Chowkidar, directed the petitioner – employer to extend the same treatment as extended to Shri Ram Jeewan.

It is also relevant to note that this Court by the order dated 06.11.2006 allowed an opportunity to the petitioner – employer to substantiate the contention raised that Shri Ram Jeewan was a member of Class – IV service, whereas the

petitioner being cleaner not eligible and entitled for any promotion.

Learned counsel for the petitioner has placed on record a copy of the seniority list, but therein no distinction is made amongst Class -IV employees and other cleaners. The seniority list placed on record i.e. 23.11.99 relates to Clerner/ Cleaner -cum- Chowkidar working in Drilling Wing of Ground Water Department up to 1.04.1998.

From perusal of the judgment dated 27.03.1991 passed by this Court in th case of Ram Jeewan, it is apparent that the appointment was given to him also to the post of Cleaner – cum- Chowkidar. As such, the statement of the petitioner that the workman Shri Mali Ram is a cleaner, whereas Shri Ram Jeewan was a member of Class – IV cadre, is factually wrong.

For the reasons stated above, I am not inclined to interfere with the matter and, therefore, the writ petition is dismissed.

(GOVIND MATHUR)J.

Anil/